

### **Remarks**

Claims 1-20 are pending in this application. Claims 1, 7, and 14 are currently amended. Claims 12-20 were previously presented. The examiner has rejected claims 1-20 under U.S.C. § 102(e) as being anticipated by U.S. Published Application No. 20030237018 to Baba.

#### **A. Remarks Regarding Independent Claims 1, 7, 14 as Being Anticipated by Baba**

Examiner has rejected the independent claims as being anticipated by Baba. (Office Action at 2). Applicants disagree. Independent claims 1, 7, and 14 have been amended. Baba does not disclose each and every element of these amended claims as required by U.S.C. § 102(e). These claims require “transferring a transaction queue from the first server to a second server of the two or more servers after detecting the failure.” However, Baba teaches “consistency between the active queue and the stand-by queue.” Baba, [0053]. Baba explicit requires “synchronization of the queues.” Baba, [0053]. Synchronization does not meet the requirements of these independent claims. Rather, the present application transfers the transaction queue after a failure is detected in order to provide flexibility, efficiency, and scalability. One of ordinary skill in the art recognizes that synchronization is a trade-off to efficiency as resources that could have been devoted to servicing transactions must be rerouted to servicing synchronization between the systems. Also, one of ordinary skill in the art would not view a transaction queue that is transferred after a failure is detected as being the same as a synchronized queue.

Also, independent claims 1, 7, and 14 require a first server and a second server. The second server of the present application is not a stand-by server as discussed in Baba. Baba teaches "switching the processing of network transaction requests from an active computer to a stand-by computer when the active computer enters a failure state." Baba, [0024]. The second server in the present application is not a stand-by server but rather is an "active" server.

For the reasons stated above, Baba does not teach every requirement of independent claims 1, 7, and 14. Thus, Baba cannot anticipate these independent claims. As Baba does not disclose every requirement of the independent claims, the dependent claims cannot be anticipated by Baba. Applicants respectfully request withdrawal of this rejection.

#### **B. Remarks Regarding Claims 3, 9, and 17 as Being Anticipated by Baba**

Claim 3 depends from independent claim 1, claim 9 depends from independent claim 7, and claim 17 depends from independent claim 14. For the reasons stated above with respect to independent claims 1, 7, and 14, Baba does not disclose all the requirements of claims 3, 9, and 17. Further, Baba does not disclose detecting a failure that is an unstable application as required by claims 3, 9, and 17. The examiner cites to paragraph [0052] of Baba as teaching this requirement. (Office Action, p. 4). However, the cited passage merely discusses that the "stand-by computer observes all of the transaction traffic on the network" utilizing a sniffing procedure. Baba, [0024]. Baba discusses the stand-by computer taking over "when the active computer fails" not when an application is detected to be unstable as required by these claims. Baba, [0024]. Thus, Baba does not disclose all the requirements of claims 3, 9, and 17. Applicants respectfully request withdrawal of these rejections.

### **C. Remarks Regarding Claims 4, 10, and 18 as Being Anticipated by Baba**

Claim 4 depends from independent claim 1, claim 10 depends from independent claim 7, and claim 18 depends from independent claim 14. For the reasons stated above with respect to independent claims 1, 7, and 14, Baba does not disclose all the requirements of claims 4 and 10. Further, Baba does not disclose detecting failure wherein the failure is a data path failure as required by claims 4, 10, and 18. Baba discusses detecting a failure in the active computer, observing transaction traffic, using a sniffing procedure, and recognizing INPUT transactions. Baba, [0024]. Baba does not discuss detecting a data path failure as required by claims 4, 10, and 18. Thus, Baba does not disclose all the requirements of claims 4, 10, and 18. Applicants respectfully request withdrawal of these rejections.

### **D. Remarks Regarding Claims 5 and 19 as Being Anticipated by Baba**

Claim 5 depends from independent claim 1 and claim 19 depends from independent claim 14. For the reasons stated above with respect to independent claims 1 and 14, Baba does not disclose all the requirements of claims 5 and 19. Further, Baba does not disclose “forwarding the transaction queue from the first server to the second server via the heartbeat mechanism” as required by claims 5 and 19. The guardian of the active server in Baba, periodically sends a signal to the guardian of the stand-by computer. Baba, [0070]. Baba does not disclose the sending the transaction queue via the guardian of either server. The guardian provides an “OK” signal when the active server is operational. Baba, [0070]. The guardian ceases to send an “OK” signal when the active server has failed. Baba, [0070]. The guardian may also provide for a reset of the active server. Baba, [0070]. However, Baba does not disclose this guardian configured to allow the forwarding of the transaction queue via this guardian.

Thus, Baba does not disclose every requirement of claims 5 and 19. Applicants respectfully request withdrawal of this rejection.

#### **E. No Waiver**

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the Baba reference. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by examiner, Applicants do not acquiesce to examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinctions discussed by Applicants are sufficient to overcome the anticipation rejections.

**Conclusion**

Applicants respectfully submit that rejections to pending claims 1-20 should be withdrawn and these claims should be passed to issuance.

Respectfully submitted,



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